

R E M A R K S

Claims 1-129, 183, 232, 255 and 278 are pending in the present application.

The Examiner has required election in the present application between Groups 1-90.

For the purpose of examination of the present application, Applicants elect, with traverse, Group 3, Claims 74, 75, 76, 255 and 278 together with linking claims 67 and 73.

Applicants traverse the above requirements for restriction as follows:

The Examiner indicates that claim 67 serves as a linking claim to Groups 1-47. It is Applicants' understanding that the Examiner will examine claim 67 together with claim 74, 75, 76, 255, 278 as well as linking claim 73 in the instant application to determine if linking claim 73 and/or linking claim 67 is allowable. A finding of allowability of linking claim 67 removes the requirement for restriction between Groups 1-47. A finding of allowability of linking claim 73 removes the requirement for restriction between Groups 3-6.

In this regard, it appears that the present Requirement is actually for an election of species. Applicants submit that, should the elected claims 74, 75, 76, 255 and 278 be found allowable, the Examiner should then search additional species of polynucleotides encoding HPIV2 polyhexameric recombinant genomes or antigenomes, such as those of Groups 1-2 and 4-47 to determine if any of these claims, as well as linking claims 67 and 73, are allowable.

Furthermore, restriction of claims is proper only if the inventions restricted are independent and distinct, and if there is an undue burden of search placed upon the Examiner. Applicants submit that no undue burden is placed on the Examiner by searching Groups 1-47

because linking claim 67 is generic to the polynucleotides encoding the HPIV2 polyhexameric recombinant genome or antigenome that the Examiner has used as the basis for restriction for Groups 1-47. Applicants are entitled to examination of a reasonable number of species within a generic claim.

Moreover, there is no undue burden placed upon the Examiner to search the species of Groups 1-47 because a search of these sequences in an appropriate database can likely be accomplished by the same query. A single search query, such as a Boolean query, using key words “polynucleotides encoding HPIV2 hexameric partial or complete genomes or antigenomes” can be used to find literature or patents related to all of the polynucleotides included in Groups 1-47.

Finally, Group 90, directed to methods of use of the elected “composition” claims, should be rejoined to the present application upon a finding of allowable claims in Group 3. Such rejoinder should be automatic provided that the scope of the claims of Group-90 is kept commensurate with the scope of the corresponding composition claims. MPEP 821.04.

The favorable action of rejoinder of claims in accord with the above, and favorable action on the merits of the application, is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mark J. Nuell, Registration No 36,623 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No.: 10/667,141

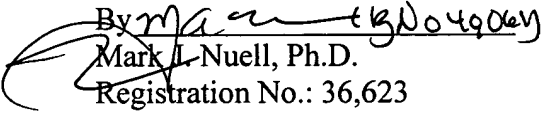
Docket No.: 1173-1034PUS2

- ☒ Attached is a Petition for Extension of Time.
- ☒ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: JUL 10 2006

Respectfully submitted,

By  Mark L. Nuell, Ph.D.

Registration No.: 36,623

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant